

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

In accordance with this court's memorandum opinion entered this day, it is **ORDERED** and **ADJUDGED** that Johnston's motion (Docket No. 104) is **CONSTRUED** as a motion to vacate, set aside, or correct sentence, pursuant to 28 U.S.C. § 2255, and the Clerk is directed to **FILE** the motion as such; the § 2255 motion is **DISMISSED without prejudice** as successive; and the case is **STRICKEN** from the active docket.

Further, the court finds that Johnston has not made the requisite showing of the substantial denial of a constitutional right as required by 28 U.S.C. § 2253(c) and, therefore, a certificate of appealability is **DENIED**.

**ENTER:** This 23rd day of August, 2012.

Norman K. Moon  
NORMAN K. MOON  
UNITED STATES DISTRICT JUDGE